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INTERSTATE COMMERCE COMMISSION

MORTGAGE ON RAILROAD REFRIGERATOR CARS AND LOCOMOTIVE

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, the undersigned, THE SAN LUIS CENTRAL RAILROAD COMPANY, a Colorado corporation, having its principal office and place of business at Monte Vista, Colorado (herein called "Mortgagor") has borrowed from THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, having its principal office and place of business in Chicago, Illinois (herein called "Mortgagee") the principal sum of One Hundred Fifty Thousand and no/100 Dollars (\$150,000) and will borrow an additional principal sum of Two Hundred Thirty-eight Thousand and no/100 Dollars (\$238,000), or so much thereof as shall be advanced (herein collectively called the "Indebtedness") pursuant to a Loan Agreement of even date herewith (herein called the "Agreement"). Said Indebtedness is payable in 26 equal quarterly installments due on the first day of each March, June, September and December commencing June 1, 1972 to and including September 1, 1978 and bears interest until paid at a rate per annum equal to 3% above the prime rate of interest of the Mortgagee from time to time applicable to commercial loans and shall change when and as said prime rate shall change, payable quarterly on the first day of each March, June, September and December commencing March 1, 1972; and

WHEREAS, as security for the payment of the Indebtedness and any other evidence of indebtedness hereafter given by the Mortgagor to the Mortgagee, the Mortgagee has required and the Mortgagor has agreed that certain railroad refrigerator cars (herein called "cars") and a certain locomotive (herein called the "locomotive") owned by the Mortgagor be mortgaged as hereinafter provided to the Mortgagee.

NOW, THEREFORE, in consideration of the premises and to secure the prompt and punctual payment of the Indebtedness and any other evidences of indebtedness which may hereafter be given by the Mortgagor payable to the order of the Mortgagee prior to the release of this mortgage, and of each and every installment of principal and interest of the Indebtedness, or other indebtedness secured hereby, and of any extensions or renewals from time to time of any thereof, or any installment thereof, Mortgagor does hereby mortgage, assign, transfer, set over and convey unto the Mortgagee, its successors and assigns, all and singular the following described property, to-wit:

One (1) General Electric 70 ton locomotive
numbered "SLC 71" and two hundred (200) refrigerator
cars numbered "SLC 200" through "SLC 399",

together with all fittings and appliances now or hereafter connected therewith, and any replacements of any parts thereof or additions thereto.

TO HAVE AND TO HOLD said property hereby granted, transferred, assigned and mortgaged unto the Mortgagee, its successors and assigns, forever, free and clear of all encumbrances of whatsoever kind or character, and the Mortgagor does hereby covenant and agree with the Mortgagee, its successors and assigns, as follows:

FIRST: That it is the owner and in possession of each and all of said cars and the locomotive, and that there are no prior encumbrances or prior liens of any kind or character against any

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of said property, and that it has good right and lawful authority to transfer, convey, assign and mortgage the same; that an office of the Mortgagor is located at Monte Vista, Colorado, and that the City of Monte Vista, County of Rio Grande, State of Colorado, is hereby declared to be the home port of each of said cars and the locomotive, and that at the time of the execution hereof all of such property is under the control of the Monte Vista office of Mortgagor, and is being operated out of Monte Vista, Colorado, as the home port of such cars and the locomotive.

SECOND: That it will not voluntarily create or suffer to be created or to arise any lien or charge upon any of the property described herein and mortgaged hereby having priority to or preference over the lien of these presents upon said mortgaged property, or any part thereof; that it will pay all lawful claims and demands of all persons whomsoever which, if unpaid, might by law be given preference as to this mortgage as a lien or charge upon said mortgaged property, or any part thereof.

THIRD: That it will at all times during the time this mortgage is in force and effect keep all said cars and the locomotive in first-class condition and repair.

FOURTH: That it will forthwith cause to be painted upon the sides of each of said cars and the locomotive, in letters not less than one inch in height, the words "The First National Bank of Chicago, Mortgagee", so located as to be readily visible and to indicate plainly that said cars and the locomotive are mortgaged to Mortgagee, and will, at its own cost, cause said markings to be maintained so long as this mortgage remains in force and effect; and Mortgagor further covenants that the markings upon said cars and the locomotive, above described, indicating the name of the owner and the numbers thereof, shall not be changed without the previous written consent of the Mortgagee, and shall be maintained by Mortgagor at its own cost, so that the same shall be plainly visible so long as this mortgage remains in force and effect.

FIFTH: That it will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon any part of said mortgaged property, as well as any demurrage or freight charges against the same, so that the priority of this mortgage shall be fully preserved in respect to said property.

SIXTH: If the mortgaged property or any of it shall be lost or destroyed from any cause whatever, Mortgagor shall

(a) replace the mortgaged property, at its own cost, with standard gauge railroad car or cars or locomotive of substantially as good material and construction and of a value at least equal to the unpaid balance on the car or cars or locomotive so lost or destroyed and if two or more cars are lost or destroyed at any time or times, Mortgagor may replace them with a lesser number of cars, provided the latter are of a value at least equal to the aggregate unpaid balance on the greater number of cars so lost or destroyed and to be replaced, or

(b) in lieu of replacing the mortgaged property as provided in subparagraph (a) of this section SIXTH mortgagor may, at its option, pay Mortgagee a sum equal to the unpaid balance on the car or cars or locomotive so lost or destroyed, or

(c) in the event Mortgagor does not elect to replace or require Mortgagee to pay for replacement of such mortgaged property, as provided in subparagraphs (a) or (b) of this section SIXTH, Mortgagor shall at any time and from time to time thereafter pay to Mortgagee forthwith upon its demand a sum equal to the unpaid balance on the mortgaged property so lost or destroyed, which sum shall be treated as a prepayment of principal and applied toward the payment of the last maturing principal installment or installments of the Indebtedness.

Mortgagor will cause any such replacement cars or locomotive to be stenciled and properly identified with the same road number of the mortgaged property being replaced, all in accordance with section FOURTH hereof. Any and all such replacements of the mortgaged property, or any of it, shall constitute accessions to the mortgaged property and shall be subject to all of the terms and conditions of this mortgage as though part of the original mortgaged property delivered hereunder.

The Mortgagee, upon request of Mortgagor, shall invest any monies received by it under subparagraph (b) of this section SIXTH until it is required to apply the same toward the purchase of replacement cars or locomotive in interest bearing or income producing obligations of the United States of America (hereinafter called "government securities") as Mortgagor may designate and any profit resulting from, or interest or income produced by, such investment shall accrue and be paid to Mortgagor. If at any time said government securities shall be selling for less than the amount invested for same, the Mortgagor shall at any time upon Mortgagee's request pay Mortgagee such additional sum as may be required to make up for any deficiency.

SEVENTH: That it will exercise all reasonable care in the protection and possession of said mortgaged property so long as said indebtedness remains unpaid, and that the property so mortgaged and pledged by this instrument shall not, during such time be further sold, encumbered or otherwise disposed of.

EIGHTH: That if default be made in the payment, when due, of any installment of principal or of interest of the ~~*Note~~ or any other indebtedness secured hereby, or if Mortgagor should fail to observe or perform any of the covenants or agreements herein or in the ~~Note~~ contained, or in any other mortgage securing any of the indebtedness secured hereby, or if any proceeding be commenced by or against Mortgagor for the adjudication of Mortgagor as a bankrupt, or for a reorganization, or for any other relief of Mortgagor as a debtor under any law, state or federal, or if a receiver be appointed for Mortgagor, or for a substantial portion of its property, or if any of the mortgaged property be levied upon or attached and the same is not within five (5) days thereafter released therefrom (all of which shall be deemed "events of default"), then in any such event all sums provided by the ~~Note~~, or other indebtedness secured hereby, to be paid, may, at the option of the holder thereof, and without notice to Mortgagor, become due and payable, and the Mortgagee shall thereupon be entitled to any or all of the following remedies, which shall not be exclusive, but shall be cumulative of any other rights or remedies at law or in equity which the Mortgagee may have, to-wit:

- (a) To demand and within ten (10) days thereafter to receive from Mortgagor peaceable possession of all said ~~taxi~~ cars ~~at~~ some place designated by the Mortgagee upon the tracks in Monte Vista, Colorado, Mortgagor agreeing that it will, at its own expense, within said ten (10) days, deliver possession of said cars to the Mortgagee at the place so designated, and in case of the failure of Mortgagor so to do, possession of said cars ~~may~~ be taken by the Mortgagee wherever the same may be found, and at the election of Mortgagee may be removed by Mortgagee to Monte Vista, Colorado, at the expense of Mortgagor, and for the purpose of having said cars ~~re-~~ moved to Monte Vista, Colorado, Mortgagor agrees that it will, upon demand, deliver to the Mortgagee, or its assigns, possession of all records it may have, showing or tending to show the location of said cars, and Mortgagee, by any of its officers, in the name of Mortgagor, may give any orders, directions, or instructions to any railroad company or other person, and may sign Mortgagor's name to any transfer, documents ~~and~~ agreements for the purpose of removing said cars, and may pay the expense of such removal and recover same ~~from~~ the proceeds of the sale of any of the mortgaged cars ~~from~~.
- (b) The Mortgagee, its agents, attorneys or representatives, shall have the right and power, with or without exercising any of the rights given in the preceding subsection, to sell at public auction, to the highest bidder, for cash, at one or more sales, all or any part of the mortgaged property, upon giving notice of the time and place thereof, by posting same at five (5) public places in the County in which such sale is to be held, at least ten (10) days prior thereto, one of which places shall be the place where such sale is to be held, or by giving notice at least ten (10) days before such sale, by publication thereof in a newspaper published at least weekly in such County, and of general circulation therein, and by giving such other notice as may be required by law at the place where such sale shall be held. Any such sale may be held at the courthouse door, or at any place where sales at public auction are customarily held in any county in any state in which any of the property to be sold may at the time be located; or at the courthouse door in the County of Rio Grande, State of Colorado. Notice to Mortgagor of any such sale

* Indebtedness
 ** Agreement
 *** and locomotive

shall be deemed to have been duly given if, not less than ten (10) days before the date of such sale, a copy of such notice shall be delivered to it or mailed by ordinary mail addressed to Mortgagor at Box 1249, Evanston, Illinois 60204. It shall not be necessary that the Mortgagee or the person conducting said sale, be in actual or constructive possession of said property at the time of such sale, or that the same be physically present at such sale, nor shall it be necessary, if said sale be held in Rio Grande County, Colorado, that said property be actually present in the county of the state in which said sale is held; and the title and right of possession to such property shall pass to the purchaser at such sale as completely as if said property had been actually present and delivered at such sale, and Mortgagor covenants and agrees to deliver all of such property to the purchaser within a reasonable time thereafter, and for that purpose to execute and deliver all proper instructions, orders, or documents to any railroad company, or other person, and such other and further assurances as may be proper or required; and such purchaser shall be entitled to exercise all the rights and privileges herein given to the Mortgagee in the preceding subsection (a) hereof for the recovery of possession of any of said cars, ^{and locomotives}. At any such sale, the Mortgagee, if the highest bidder therefor, may become the purchaser of any such property. The proceeds of any such sale shall be applied:

- First: To the payment of all costs and expenses of such sale, including any expenses which may have been advanced or incurred by the Mortgagee in recovering possession or custody of, or in causing the return of said property to the place of sale, if any, together with an attorney's fee of Ten Per Cent (10%) of the amount realized at such sale, as a fee for the foreclosure hereof.
- Second: To the payment of the indebtedness secured by this mortgage, with interest and attorney's fees.
- Third: Any excess shall be paid to Mortgagor or its assigns.
- (c) The Mortgagee may proceed by action or actions in any court or courts of competent jurisdiction to foreclose this mortgage.

The provisions of this mortgage shall be binding upon the successors and assigns of Mortgagor, and shall inure to the benefit of the successors and assigns of the Mortgagee.

IN WITNESS WHEREOF, the undersigned, The San Luis Central Railroad Company, has caused this instrument to be executed in its name by its duly authorized officers this 1st day of October, 1971.

THE SAN LUIS CENTRAL RAILROAD COMPANY

ATTEST:

Thomas E. Mylen
Secretary

By

Edward A. Burkhardt
President

STATE OF ILLINOIS }
COUNTY OF C O O K } SS

I, Thomas P. Holland, a notary public in and for said County and State, do hereby certify that EDWARD A. BURKHARDT, personally known to me to be the President of The San Luis Central Railroad Company, a Colorado corporation, and THOMAS E. MYERS, JR., personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary they signed and delivered the said instrument as President and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 15th day of October, 1971.

Thomas P. Holland
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES SEPTEMBER 10, 1972